



August 27, 2013

US Army Corps of Engineers, New Orleans District
Regulatory Branch
7400 Leake Ave
PO Box 60267
New Orleans, Louisiana 70160
Attn: Mr. Brian Breaux

**RE: Ponderosa Ranch of Pointe Coupee Mitigation Bank, Pointe Coupee Parish,
Louisiana, Final MBI Submittal (MVN-2011-03213).**

Mr. Breaux:

Please find enclosed the final Mitigation Banking Instrument (MBI) for the above-referenced project. The purpose of this submittal is for your review in accordance with 33 CFR 332.8 (d) (8). The CEMVN provided comments on August 2, 2013 to Delta Land Services (Sponsor) on the preceding version of the MBI (submitted May 7, 2013). Members of the Interagency Review Team (IRT) were copied on this correspondence. Following submittal of those comments, the CEMVN provided the MVN Modified Charleston Method (MCM) model to the Sponsor via electronic mail on August 5, 2013. A conference call was held on August 6, 2013 to discuss the comments.

The comments have been considered by the Sponsor and incorporated into the final MBI where necessary. A comment response document was prepared by the Sponsor in accordance with 33 CFR 332.8 (d) (8) and is enclosed. We are providing a copy of these documents directly to the IRT members per the requirements of 33 CFR 332.8. A copy of other supporting documents such as the conservation servitude, escrow agreements, and Microsoft Word ® and Excel ® files will be provided to the CEMVN via electronic mail (email). If you have any questions or need additional information please contact me at 225-388-5146 or daniel@deltaland-services.com.

Regards,

Daniel Bollich, PWS, CWS, Ecological Program Director
Delta Land Services, LLC

1090 CINCLARE DRIVE | PORT ALLEN, LA 70767 | OFFICE (225)343-3900 | FAX (225)343-3200

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Page 2 of 2
Mr. Brian Breaux
August 27, 2013

cc:

Mr. Raul Gutierrez, US Environmental Protection Agency
Ms. Patti Holland, US Fish and Wildlife Service
Mr. Kyle Balkum, Louisiana Department of Wildlife and Fisheries

enclosures:

Enclosure A: Final Ponderosa Ranch of Pointe Coupee Mitigation Banking Instrument (dated August 27, 2013)

Enclosure B: Comment Summary and Response Supporting Document (dated August 27, 2013)

**Enclosure A: Final Ponderosa Ranch of Pointe Coupee
Mitigation Banking Instrument
(dated August 27, 2013)**



Ponderosa Ranch

of Pointe Coupee Mitigation Bank

Mitigation Banking Instrument

Pointe Coupee Parish, Louisiana

Prepared for

U. S. Army Corps of Engineers,
New Orleans District (Chair)

Prepared by: Delta Land Services, LLC

August 27, 2013



BANKING INSTRUMENT

PONDEROSA RANCH OF POINTE COUPEE MITIGATION BANK

**Bottomland Hardwood and Baldcypress Swamp Re-establishment, Rehabilitation
and Enhancement Project**

Pointe Coupee Parish, Louisiana

Sponsored By:

Delta Land Services, LLC

Prepared August 27, 2013

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Attachment A – Maps

Figure 1. Vicinity Map

Figure 2. Service Area Map

Attachment B – Title Report/Opinion

Attachment C – Mitigation Work Plan

Attachment D – Acceptance Letter

MITIGATION BANKING INSTRUMENT

PONDEROSA RANCH OF POINTE COUPEE MITIGATION BANK

This Mitigation Banking Instrument (MBI) establishing the Ponderosa Ranch of Pointe Coupee Mitigation Bank (Bank) is made and entered into by and among Delta Land Services LLC (Sponsor), the heirs of the Succession of John E. Jumonville, Sr. and Claude Coulon Jumonville (Owner) and the Interagency Review Team (IRT) composed of the U.S. Army Corps of Engineers New Orleans District (CEMVN), Region VI of the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the Louisiana Department of Wildlife and Fisheries (LDWF). This MBI is a binding agreement among the parties and incorporates the detailed Mitigation Work Plan and any other attachments to the MBI as a part hereof.

I. Purpose of MBI

This MBI sets forth guidelines and responsibilities for the establishment, use, operation, protection, monitoring and maintenance of the Bank to assure the proposed work associated with the Bank produces the necessary mitigation credits to compensate for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, provided such activities have met all applicable requirements and are authorized by the appropriate regulatory agencies pursuant to 33 CFR 332.1 et seq. The Bank may also be used to satisfy the environmental requirements of other programs in accordance with the requirements and limitations of 33 CFR 332.3 and Section XI in this MBI.

II. Location and Ownership of Bank Property (Property)

A. Property Location

The Property is located at latitude 30.644274° N and longitude 91.402546° W (approximate center point) in Pointe Coupee Parish, Louisiana (Attachment A, Figure 1). This location includes all or portions of Section 101, Township 5 South, Range 10 East and Sections 18 and 97, Township 5 South, Range 11 East. The Property is located approximately three miles south-southeast from New Roads, Louisiana. To reach the Property from the intersection of US Highway 190 and LA Highway 413 (Bayou Poydras Road) in Erwinville, Louisiana, proceed north on LA Highway 413 for 4.8 miles. Turn left onto Highway 416 and travel 0.2 miles. Turn right on Highway 413 and proceed north for 0.5 miles. Turn left on Highway 414, travel approximately 1.6 miles to Oilfield Road, and take a right onto Oil Field Road (private road). At this point, there is a locked gate so arrangements must be made with DLS or the Owner prior to further access. From the gate travel approximately 1.4 miles and take a right on the unimproved road for approximately 2.31 miles. The Bank is on the right (east side of the unimproved road).

B. Property Ownership

The property owner is Claude Coulon Jumonville, who is referenced as the Owner throughout this MBI. Prior to June 13, 2012, the Property was owned in the proportions of an undivided three-fourths (3/4th) interest by the Succession of John E. Jumonville (also known as John E. Jumonville, Sr. or J. E. Jumonville, Sr.), and an undivided one-fourth (1/4th) interest to the Owner. On June 13, 2012, a judgment of possession was rendered in the Succession of John E. Jumonville and Claude Coulon Jumonville became the sole owner of the Property. The Property has been under the ownership of John E. Jumonville and/or his estate (and now Claude Coulon Jumonville) since 1947. The property sits within a larger 2,131-acre tract of the same ownership.

C. Property Legal Definition

A certain parcel of land, together with all buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, prescriptions, advantages and appurtenances thereunto belonging, or in anywise appertaining, situated as stated above and more fully described as a tract or parcel of land located in section 97 Township 5 South, Range 11 East and Section 101 Township 5 South, Range 10 East in Pointe Coupee Parish, Louisiana. For a point of reference begin at a cross-tie marking the apparent corner common to section 55 township 5 south, range 10 east and section 18, 97 and 98, township 5 south, range 11 east; thence north 33 degrees 34 minutes 17 seconds east a distance of 105.03 feet to a calculated point; thence run north 16 degrees 48 minutes 23 seconds east a distance of 3007.60 feet to a calculated point and the point of beginning (Northing of 777660.449 and Easting of 3261139.379 using State Plane, North American Datum of 1983 (NAD83), Louisiana South, US Survey Feet). From the point of beginning run north 78 degrees 17 minutes 13 seconds west a distance of 1805.64 feet to a calculated point; thence north 59 degrees 31 minutes 24 seconds west a distance of 1575.41 feet to a calculated point; thence south 45 degrees 14 minutes 25 seconds west a distance of 417.66 feet to a calculated point; thence north 48 degrees 38 minutes 17 seconds west a distance of 2371.70 feet to a calculated point; thence north 56 degrees 28 minutes 53 seconds east a distance of 81.32 feet to a calculated point; thence north 09 degrees 23 minutes 01 second east a distance of 71.42 feet to a calculated point; thence north 58 degrees 12 minutes 41 seconds east a distance of 3780.42 feet to a calculated point; thence south 43 degrees 38 minutes 32 seconds east a distance of 821.75 feet to a calculated point; thence south 23 degrees 43 minutes 42 seconds east a distance of 135.91 feet to a calculated point; thence south 43 degrees 47 minutes 06 seconds east to a distance of 377.14 feet to a calculated point; thence south 23 degrees 47 minutes 11 seconds east a distance of 102.80 feet to a calculated point; thence south 70 degrees 33 minutes 17 seconds east a distance of 86.15 feet to a calculated point; thence south 43 degrees 42 minutes 49 seconds east a distance of 1268.81 feet to a calculated point; thence south 0 degree 29 minutes 19 seconds west a distance of 840.31 feet to a calculated point; thence south 68 degrees 41 minutes 38 seconds east a distance of 535.33 feet to a calculated point; thence south 16 degrees 48 minutes 24 seconds west a distance of 1605.53 feet to the point of beginning, consisting of 323.76 acres.

The perimeter of the Property is defined by the following coordinates in decimal degrees:

Latitude	Longitude
30.63020156	-91.398527
30.63044207	-91.398712
30.63835922	-91.395952
30.63936427	-91.401574
30.64155881	-91.405893
30.64074973	-91.406836
30.64505542	-91.412499
30.64517902	-91.412284
30.64537276	-91.412247
30.65085372	-91.402033
30.64921970	-91.400228
30.64887771	-91.400054
30.64812954	-91.399224
30.64787098	-91.399092
30.64794996	-91.398833
30.64542985	-91.396044
30.64311961	-91.396065
30.64258556	-91.394479

D. Recorded Liens, Encumbrances, Easements, Servitudes or Restrictions

Title to the Property has been documented by a title opinion (Attachment B) generated by the Law Offices of Jewell & Jewell on August 26, 2013 and will be updated two weeks prior to execution of the conservation servitude. Any exceptions to the real estate title not subordinated to the conservation servitude are listed below.

The Bank is free of any mortgages, liens and encumbrances except for four mortgages held in favor of Peoples Bank and Trust Company of Pointe Coupee. However, Peoples Bank and Trust Company will subordinate all four of the mortgages in favor of the conservation servitude described in Section X.A of this MBI. There are no zoning or existing ordinances in place affecting the Bank.

A mineral title opinion was rendered by the Law Offices and Jewell & Jewell to the Sponsor on January 22, 2013 regarding the existence of any mineral leases or mineral ownership. The Opinion states that minerals and mineral rights are owned by the following persons in undivided portions as follows: 1) Claude Coulon Jumonville (Owner) (1/4th), 2) Trustee of the Alexander E. Jumonville Spendthrift Trust (1/4th), 3) ETC Land & Holdings, LLC, 4) Leah Estes Theriot Miller (1/8th) and 5) Bryan Estes (1/8th). Claude Coulon Jumonville (Owner) owns 100% of the executive rights associated with the aforementioned minerals and mineral rights. The Sponsor conducted a review of the Louisiana Department of Natural Resources (LDNR)

Strategic Online Natural Resources Information System (SONRIS) database for oil and gas activity. This review revealed the location of two wells within or in close proximity to the Bank but these wells were plugged and abandoned.

III. RESPONSIBILITIES OF PARTIES

A. The Owner

1. The Owner will furnish satisfactory evidence of clear title prior to the execution of this MBI unless such evidence of clear title was previously provided by a former owner of the site pursuant to this MBI.
2. The Owner will grant a perpetual conservation servitude over the Property in accordance with Louisiana law and La. R.S. 9:1272, and 33 C.F.R. § 332.8(t). Upon execution of the conservation servitude, the Owner will record it with an attached copy of this MBI in the conveyance records of Pointe Coupee Parish, unless such conservation servitude was previously executed and properly recorded by a former owner pursuant to this MBI. Proof of such recordation will be provided to the IRT within 15 days of filing.
3. The Owner will not allow any prohibited uses of the Property as set forth in this MBI and the conservation servitude.
4. To avoid the risk of possession by a financial institution, the Owner will not identify the Property as collateral for any business transaction.
5. The Owner will allow the Sponsor access to the Property. Any limitations on such access are to be a matter of contract between the Owner and the Sponsor. The Owner will also allow access to the Property to IRT members and the Holder in accordance with this MBI.
6. The Owner will make periodic inspections of the Property of not less than once per year to verify that use of the Property is consistent with this MBI and the conservation servitude and to inspect for any damage caused by flood, fire, storm, wind, accident, vandalism, negligence or other act or event that causes damage to the Bank.
7. In the event the Owner discovers a prohibited use or any damage to the Property, it shall notify the IRT and Sponsor within 15 days of its discovery of such use or damage.
8. The Owner shall notify the Sponsor and the IRT of any proposed transfer of the Property in accordance with the provisions of this MBI.

B. The Sponsor

1. Through contractual agreement with individual permit recipients, the Sponsor will, for a fee to be paid by permittees, provide compensation for wetland impacts as required in DA permits and commit to enhance and restore wetland functions and maintain wetland habitats in accordance with the provisions of this MBI.

2. The Sponsor will assume the legal responsibility for compensatory mitigation requirements of DA permits for which it transfers credits once a permittee has secured the appropriate number and type of credits from the Sponsor. The Sponsor will provide to CEMVN the documentation that confirms that the Sponsor has accepted the responsibility for providing the required compensatory mitigation. If the Sponsor fails to provide the required compensatory mitigation, CEMVN may pursue enforcement measures against the Sponsor to ensure compliance with the mitigation requirements of DA permits.

3. The Sponsor will perform all necessary work to establish, monitor and maintain aquatic habitats and buffers as described in the Mitigation Work Plan until the Sponsor has demonstrated to the satisfaction of the agencies represented on the IRT (acting through the Chair) that the Bank complies with all provisions contained herein, or until all credits are sold, whichever is later.

4. The Sponsor will be responsible for maintaining accounting records, notifying the IRT of credit sales, monitoring the Bank for success, conducting remedial action as necessary to insure success, and providing this information to CEMVN in reports documenting Bank usage and the results of monitoring in accordance with the provisions of this MBI.

5. The Sponsor will be responsible for advising the IRT of any pending sale of the Property or change in sponsorship at least 60 days prior to the effective date.

6. The Sponsor will obtain all appropriate environmental documentation, permits and other authorizations needed to establish and maintain the Bank, prior to debiting or advancing of credits. Compliance with this MBI does not fulfill the requirement, or substitute, for such authorization.

7. Unless any of the responsibilities identified above are transferred, with prior approval of CEMVN, to a long-term steward or new ownership, the Sponsor remains responsible for: 1) the compensatory mitigation requirements for any DA permits for which it sold Bank credits; and 2) the long-term management, maintenance, monitoring and protection of the compensatory mitigation represented by those credits.

C. The IRT

Signing of this MBI does not constitute a binding agreement of action on the part of any resource agency beyond its customary regulatory purview. Subject to the availability of staff and funds, the agencies represented on the IRT agree to:

1. Provide appropriate oversight in carrying out provisions of this MBI.

2. Provide comments on all project plans, proposed additions of land to the Bank, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank.

3. Review and confirm reports on evaluation of success criteria prior to approving credits or releasing escrow account funds.

4. Conduct compliance inspections as needed and recommend corrective measures (if any) to the Sponsor, until the terms and conditions of the MBI have been determined to be fully satisfied or until all credits have been sold, whichever is later.

5. Review, comment and approve/disallow any modifications to this MBI.

D. The Holder of Conservation Servitude (Holder)

1. The Holder shall hold and enforce the conservation servitude placed on those lands within the Bank subject to a recorded perpetual conservation servitude so that Bank lands are protected in perpetuity.

2. The Holder will notify CEMVN within 24 hours of the discovery of any action taken to void or modify the conservation servitude.

3. The Holder shall perform yearly inspections and provide annual reports as to compliance with restricted and approved uses of the Property identified in the conservation servitude.

4. The Holder may be the recipient of the financial assurance should the Sponsor be in default of this MBI and shall utilize such funds as directed by the IRT,

5. The Holder may serve as the Long-Term Steward should the Sponsor make arrangements for the Holder to act in this capacity.

E. Long-Term Steward (Steward)

If a long-term Steward is appointed, the Steward will assume the responsibilities of the Sponsor and will perform the long-term maintenance, management, monitoring and reporting responsibilities in accordance with this MBI.

IV. GOALS AND OBJECTIVES

The Bank will provide 242.7 acres of bottomland hardwood re-establishment, 6.6 acres of bottomland hardwood rehabilitation, 38.8 acres of baldcypress swamp re-establishment, 13.8 acres of baldcypress swamp rehabilitation and 2.1 acres of baldcypress swamp enhancement to compensate for unavoidable wetland impacts for the Terrebonne Basin. Goals, objectives and contributions to overall watershed/regional functions provided by the Bank are described in the Mitigation Work Plan (Attachment C).

V. PERFORMANCE STANDARDS

In order for the Bank to be considered acceptable for mitigating wetland impacts associated with DA permits, the Property will be restored in accordance with the Mitigation Work Plan such that it meets wetland criteria as described in the 1987 Corps of Engineers Wetlands Delineation Manual and the 2010 Atlantic and Gulf Coastal Regional Supplement (the 1987 Manual and AGCP Regional Supplement). Performance standards used to measure the success of the Bank are provided in the Mitigation Work Plan.

VI. MONITORING PLAN AND REPORTING PROTOCOLS

A. Monitoring

The Sponsor agrees to perform all work necessary to monitor the Bank to demonstrate compliance with the success criteria established in this MBI. Monitoring guidelines are established in the Mitigation Work Plan.

B. Reporting Protocols

The Sponsor agrees to provide all monitoring reports as described in the Mitigation Work Plan (Attachment C).

VII. CONTINGENCIES AND REMEDIAL ACTIONS

A. Adaptive Management

In the event the IRT determines adaptive management is needed, the Sponsor is responsible for implementing an approved Adaptive Management Plan in accordance with 33 CFR 332.4(c)(12) and 33 CFR 332.7(c). The Adaptive Management Plan, Section XII in the Mitigation Work Plan, identifies specific measures to be taken and a timetable to complete the work to correct most potential deficiencies.

B. Notice of Deficiency

1. If monitoring discloses that the Bank does not meet success criteria, the Sponsor will provide a Notice of Deficiency to CEMVN that success criteria have not been met. This notice shall be submitted with the monitoring report. Along with the notice, the Sponsor will provide a detailed explanation of the deficiency and a proposal identifying specific measures to be taken and a timetable to complete the work to correct the deficiency. CEMVN, in consultation with the IRT, shall determine a course of action required to correct deficiencies and then notify the Sponsor to engage in corrective actions pursuant to the Adaptive Management Plan or other action as the situation may warrant.

2. When a disaster (natural or man-induced) adversely affects the Bank, the Sponsor shall provide a Notice of Deficiency to CEMVN of such circumstance within two weeks of the

event. The notice will identify the disaster and impacts to the Bank, specify measures to be taken to correct the impacts and a timetable to complete the work necessary to restore the Bank. CEMVN in conjunction with the IRT shall review said information and determine if the disaster was beyond the control of the sponsor and if the damage incurred on the bank site as a result of the disaster is substantial. If the disaster is determined to be beyond the control of the Sponsor and have caused substantial damage then the procedure outlined in VII.D will be followed otherwise CEMVN shall then notify the Sponsor to engage in corrective actions pursuant to the Adaptive Management Plan or other action as the situation may warrant.

C. Conditions for Suspending Credit Sales

1. Should the IRT determine that the Bank is not performing according to the standards and criteria set forth in this MBI, credit sales will be suspended. Sale of credits will not resume until remedial actions have been taken and the deficiencies are corrected.

2. If the Sponsor fails to implement adaptive management to address any failure in meeting the performance standards within one growing season (November 1 of the following year) after notification, the IRT, acting through the CEMVN, will notify the Sponsor of the revocation of any remaining mitigation credits. If the IRT determines that the Bank is operating at a deficit at this time, the Sponsor will replace the credit deficit at another mitigation bank. The perpetual conservation servitude will remain in place on the Property to protect accrued credits.

D. Catastrophic Events Including Natural Disasters and Unlawful Acts¹

In the event substantial damage to the Bank caused by a natural or human-caused disaster or a deliberate and unlawful act, the CEMVN, in consultation with the Sponsor and the IRT, determines that the disaster was beyond the control of the Sponsor, its agents, contractors, or consultants to prevent or mitigate; the Sponsor may request, and the CEMVN, in consultation with the IRT, may approve changes to the construction, operation, project milestones, performance standards or crediting formula of the Bank.

In addition, should a disaster with substantial damage to the Bank occur:

1. Use of the Bank will be temporarily suspended pending determination of the degree of impacts and measures necessary to remediate identified impacts to the Bank. The IRT will then determine whether:

a. The surviving mitigation provided by the Bank will cover the credits sold from the Bank; and,

¹ A natural catastrophic event includes, but is not limited to, a flood equal to or greater in magnitude than the 100-year flood event, earthquake, drought, debilitating disease, wildfire, depredation, regional pest infestation, or fluvial morphic change. A human-caused catastrophic event includes, but is not limited to, war, insurrection, riot, or other civil disorders, spill of a hazardous or toxic substance, or fire. A deliberate and unlawful act includes, but is not limited to, the dumping of a hazardous or toxic substance, as well as significant acts of vandalism or arson. If any such act occurs the IRT, in consultation with the Sponsor, will determine what changes to the Bank and/or this MBI will be in the best interest of the Bank and the aquatic environment.

b. Sufficient mitigation success at the Property despite the natural disaster will enable the sale of credits to continue.

2. The Sponsor will implement adaptive management measures necessary to remediate identified impacts within one year of the event. Subsequent adaptive management measures may be necessary. If the IRT determines that the Property is not performing as intended, credit sales will be suspended until the Sponsor has performed remedial work necessary to produce additional credits. The Sponsor will continue to provide monitoring reports as specified in this document unless determined to be unnecessary by the IRT.

3. If identified remedial actions are not taken within one year following the event, the IRT will close the Bank.

4. Instead of closing the Bank, the Sponsor may elect to restore damages resulting from the natural disaster to pre-disaster conditions. The IRT will re-evaluate the credits and provide to the Sponsor a revised monitoring and reporting schedule, credit determination and release schedule for the remaining credits based on the restoration effort.

E. Financial Responsibilities

Regardless of the cause of the remedial action, the Sponsor shall bear the financial responsibility for any and all remedial measures necessary to correct any deficiency caused by any means prior to successful attainment and verification of all Long-term Success Criteria by the IRT.

VIII. INSPECTION BY IRT AND HOLDER

The Sponsor and the Owner will allow access to the Property to members of the IRT or their agents or designees, and the Holder for the purpose of inspection, compliance monitoring, adaptive management, corrective measures and remediation consistent with the terms and conditions of this MBI. Inspecting parties will give a three-day minimum notice to the Sponsor and/or the Owner prior to any site visit.

IX. FINANCIAL PROTECTION

A. The Sponsor agrees to provide Financial Assurances sufficient to ensure satisfactory completion for the work described in the Mitigation Work Plan and the Adaptive Management Plan. The Sponsor is establishing the Construction and Establishment (C&E) financial assurance to assure sufficient funds are available to perform work required to construct and maintain the Bank through successful attainment of long-term success criteria. An assessment of the initial and capital costs and ongoing management funds required to manage and monitor the Bank is included in the Mitigation Work Plan and provides an estimate of work and cost requirements for construction and establishment of the Bank through achievement of long-term success criteria. To fund this account, the Sponsor proposes to establish the Ponderosa Ranch of Pointe Coupee Mitigation Bank Construction and Establishment Fund by means of an escrow account in the

amount of \$274,281.24. The Financial assurance shall be reduced as success criteria are achieved and the probability decreases that those funds would be needed according to the following schedule:

1. Upon verification by the IRT that the construction work has been completed, the CEMVN, acting on behalf of the IRT, shall advise the Sponsor that the C&E financial assurance may be reduced by \$163,812.50.
2. Upon verification by the IRT that the initial success criteria have been attained for all tracts, the CEMVN, acting on behalf of the IRT, shall advise the Sponsor that the C&E financial assurance may be reduced by \$57,779.37.
3. Upon verification by the IRT that the interim success criteria have been attained for all tracts, the CEMVN, acting on behalf of the IRT, shall advise the Sponsor that the C&E financial assurance may be reduced by \$37,104.79.
4. Upon verification by the IRT that the long-term success criteria have been attained for all tracts, the remaining C&E financial assurance shall be released to the Sponsor.

B. The Sponsor shall provide copies of annual status of the financial assurances to CEMVN upon request and/or in their monitoring reports.

C. The financial assurances shall guarantee payment to a third party, as determined appropriate by the CEMVN in consultation with the IRT, in the event that the Sponsor does not fulfill its obligations to perform, as specified in this MBI.

D. Payment to Sponsor, or if necessary, to a third party as identified by CEMVN, of a specified amount of the financial assurances shall be made upon written notification by CEMVN to the financial institution.

X. LONG-TERM PROTECTION AND MAINTENANCE

A. Conservation Servitude

The Owner shall burden the Property with a perpetual conservation servitude in accordance with Louisiana law, La. R.S. 9:1272. The conservation servitude shall be signed and filed in the Pointe Coupee Parish office with an executed copy of the MBI attached. After filing, a copy of the recorded conservation servitude, clearly showing the book, page and date of filing, will be provided to CEMVN prior to the release of credits.

Additionally, prior to execution of the conservation servitude, the Owner shall provide evidence that the entity proposed to hold the conservation servitude is a CEMVN approved Holder by virtue of being either a governmental body empowered to hold an interest in immovable property under the laws of the State of Louisiana or the United States of America; or is a non-profit corporation organized pursuant to Louisiana's Non-Profit Corporation Law, Title 12, Sections 201-269 of the Louisiana Revised Statutes, the purposes or powers of which include

retaining or protecting the natural, scenic, or open-space values of immovable property; assuring the availability of immovable property for agricultural, forest, recreational or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, archaeological or cultural aspects of unimproved immovable property. Upon execution of the conservation servitude previously described, the Holder shall hold and enforce the conservation servitude placed on the Property and the Property shall be protected in perpetuity.

Modification of the conservation servitude is not permissible without approval from the IRT. Any proposed modification to the conservation servitude, or to the rights and obligations created under it, requires Grantor to provide a 60-day notice to CEMVN and all other members of the IRT. The Grantor must provide this notice as a written request describing existing language and the requested modification to CEMVN and other IRT members. CEMVN, after consultation with other IRT members, will make the decision as whether or not to approve any modification to the conservation servitude.

The Owner understands that the conservation servitude applies to all the Property upon which it is placed, not just those portions of the Property identified as wetlands. No other human activities that result in the material degradation of habitat within the Bank shall occur without written authorization from CEMVN, through consultation with the IRT.

1. Prohibited Uses. No activities that result in the material degradation of habitat within the Bank shall occur unless written authorization is obtained. Prohibited uses include but are not limited to:

- a. Construct any structure or structures on said Property;
- b. Cut, burn, remove or destruct vegetation (including trees) on said Property except in accordance with an IRT approved plan for controlling invasive species and those described in the Mitigation Work Plan;
- c. Build, or allow to be built, developed roads, trails or paths on said Property except as authorized by CEMVN and described in the Mitigation Work Plan;
- d. Partition or enclosing the Property with fencing beyond what is prescribed in the Mitigation Work Plan and without written authorization from CEMVN;
- e. Change the elevation of or contours (excavate or deposit dredged material) of said Property except in accordance with the Mitigation Work Plan or under an approved adaptive management plan;
- f. Allow pumping, draining or causing said Property to be drained in any way;
- g. Place, fill, store, or dump refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items on the Property;

h. Allow land clearing or deposition of soil, shell, rock or other fill on the Property without written authorization from CEMVN;

i. Allow grazing of cattle or other domestic livestock on the Property.

j. Allow other commercial, industrial, agricultural, mineral exploration and extraction or residential uses of the Property without written authorization from CEMVN;

k. Allow the operation of any vehicle on the Property in a manner such that its use destroys/removes vegetation or alters the natural contours of the surface elevation except in accordance with the Mitigation Work Plan or under an approved adaptive management plan; or,

l. Allow any other activities, which are inconsistent with the establishment, maintenance and protection of the Property as identified in the Mitigation Work Plan.

2. Allowed Uses. The Owner/Sponsor shall not use or authorize the use of areas within the Bank for any purpose that interferes with its conservation purposes other than those exclusively specified below:

a. Monitoring of vegetation, soils and water;

b. Maintenance of wetlands, pre-existing trails, bridges, berms, dams, outlet and spillway structures, and other appurtenant facilities as identified in the Mitigation Work Plan;

c. Licensed hunting, fishing, trapping and non-consumptive recreational uses (i.e., hiking bird watching, etc.);

d. Ecological education that does not involve alteration, destruction or injury to any vegetation, habitat, trees, ground areas, etc.;

e. Compliance with federal regulations or appropriate court orders;

f. Activities identified in Section VI necessary to implement and maintain the development of the Bank in accordance with this MBI;

g. Any activity that has received authorization from CEMVN through a DA permit and coordinated through the IRT. The owner, sponsor and/or project proponent understand that the construction, operation and abandonment of any authorized activity must be done in such a manner that minimizes direct, secondary and cumulative adverse impacts to the bank. At the termination of the authorized activity, the site will be restored to pre-project elevations and planted with a mixture of appropriate wetland species. The Owner and Sponsor acknowledge that such activities have the potential to reduce the total amount of credits available in the bank depending on the extent of the impacts to the bank.

B. Long-Term Maintenance Plan

The Long-Term Maintenance Plan is outlined in the Mitigation Work Plan.

XI. BANK USE

Credits derived from the ecological benefits associated with implementation and maintenance of the Bank may be used as compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act provided such activities have met all applicable requirements. Additionally, these credits derived may be used as compensation for wetland impacts outside the New Orleans District or for other programs provided approval from CEMVN is obtained first. In instances where credits are used for purposes other than compensation for DA permits, the determination of amount of acres necessary to satisfy those compensatory requirements will be made by the agency in charge of that respective program. Regardless of the program for which an ecological credit is used that acreage is deducted from total acreage of the Bank and may not be used again.

A. Bank Service Area

The Bank is established to provide compensation for impacts to bottomland hardwood and baldcypress swamp wetlands, in United States Geological Survey (USGS) Hydrologic Cataloging Unit 08070300 of the Terrebonne drainage basin. The primary service area will be the 8-digit hydrologic unit in which the bank is located which is Hydrologic Unit Code (HUC) 08070300 (Lower Grand River Watershed) (Attachment A, Figure 2). The secondary Service area will be the HUC 08090302 (West Central Louisiana Coastal Watershed).

B. Projects Eligible to Use the Bank

Only after CEMVN has determined that the Bank is appropriate can the Bank be used to satisfy a permittee's mitigation responsibilities. Generally, the Bank will not be appropriate for adverse impacts occurring outside the primary Bank service area and/or impacts that are to other wetland types. However, CEMVN may consider use of the Bank on a case-by-case basis if, after consulting with the other regulatory and resource agencies, they determine that the Bank offers ecologically preferable compensation to that available within the impacted watershed. Compensation for out-of-kind impacts and/or impacts in other watersheds may increase the amount of required mitigation.

C. Determination of Bank Credits

To determine the amount of acres required to offset a particular impact to wetlands, CEMVN will use either best professional judgment or an assessment method to determine the number of credits per acre available at the Bank and the number of credits lost as a result of an impact. The same assessment method will be used to calculate both credits available and credits lost.

In the event best professional judgment is used instead of a model to assess the compensatory mitigation requirements, CEMVN will use the following table of ratios (impact acres to mitigation acres) to determine the amount of mitigation to offset the impact.

Type of Mitigation	Habitat Quality of Impacted Wetland		
	Low	Medium	High
Re-establishment	1:1	1:1.5	1:2.5
Rehabilitation	1:1.1	1:2	1:4
Enhancement	1:1.2	1:4	1:6

D. Schedule of Credit Availability

Credit release is tied to achieving all the milestones within the success criteria at specific monitoring times as outlined in the Mitigation Work Plan, Section V. B.

E. Credit Transactions

1. Stipulations regarding the Sale of credits

a. The Sponsor agrees to assume legal responsibility for the permittee's compensatory mitigation requirements identified in a permittee's DA permit once the Sponsor enters the transaction into the Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) which transfers Bank credits to that permittee's permit. Immediately following this entry, the Sponsor will provide written documentation (Attachment D) that confirms that he has accepted the legal responsibility for providing the required compensatory mitigation. The written transaction documentation shall be signed by the Sponsor and shall state that the Sponsor has accepted legal responsibility for the compensatory mitigation required by the DA permit. In accepting this responsibility, the Sponsor accepts the legal responsibility for the long-term management, maintenance, monitoring and protection of the restored wetlands represented by the transferred credits. If the Sponsor fails to provide the required compensatory mitigation, CEMVN may pursue enforcement measures against the Sponsor to ensure compliance with the mitigation requirements of the DA permit.

b. Sponsor shall complete and sign the written transaction documentation referenced in paragraph E.1.a above and forward it to CEMVN the same date it enters the transaction information into RIBITS.

c. The Sponsor will not sell credits prior to receiving approval from CEMVN. The Sponsor will contact the appropriate CEMVN project manager for DA permit transactions to verify acreage requirements and necessary ledger information. Where a credit transaction is not related to a CEMVN DA permit action, the Sponsor must contact the CEMVN bank project manager for approval to sell those credits. Sale will generally be approved unless there is a DA permit pending that proposes to use all or part of the requested credits. A credit transaction for a CEMVN DA permit will take precedence over all other credit transactions. CEMVN will generally provide

written confirmation of its decision but may give verbal approval and then document its decision in follow-up correspondence.

d. The Sponsor shall not commit to providing mitigation that is not available or is committed for other projects. Should the number of credits debited exceed the number created, the Sponsor shall secure mitigation from another bank within the watershed to fully offset the credit shortage.

e. Credits will be sold in no less than tenth acre increments.

2. Procedure for selling Bank credits

a. CEMVN, with input from interested resource agencies, will determine the credits that must be secured to fully compensate for a proposed project's wetland impacts when those impacts are associated with a DA permit. The CEMVN project manager will inform the applicant in writing that the Bank is appropriate for offsetting the unavoidable adverse impacts associated with his proposed project. At this point, the applicant may choose the Bank or another appropriate bank to perform his compensatory mitigation or he may opt to perform his own appropriate permittee-responsible mitigation project. The amount of mitigation required is determined by the CEMVN project manager and will be rounded to the nearest one-tenth (0.1) acre.

b. Should the permit applicant select this Bank, the permit applicant will contact the Sponsor and arrange with the Sponsor to purchase the necessary acres as determined by CEMVN. The Sponsor must then contact the appropriate CEMVN party to obtain approval as stipulated in 1.a above.

3. Credit Sale Notification

a. Upon contracting for the credit sales, the Sponsor shall enter the necessary information into RIBITS. The information will include the Corps jurisdiction, date of transaction, permittee name, credits debited, permit number, wetland type impacted, acres impacted, impact project's USGS 8-digit HUC, and impact latitude and longitude.

b. No matter what arrangements are made between the Sponsor and permit applicant (including pricing, graduated payments, phasing in of the compensation, etc.), the amount of acreage required by the CEMVN DA permit will be deducted from the Bank's balance at the time the permit is issued.

F. Requirements for Initial Credit Release

No credits will be released until the Sponsor has provided a signed statement stating that all of the following requirements have been met and has provided copies of the following executed documents, as appropriate:

1. **Permits:** Obtain all necessary permits or other authorizations needed to construct and maintain the Bank. This MBI does not fulfill or substitute for such authorization.

2. Holder Qualifications: Evidence that the entity proposed to hold the conservation servitude is a CEMVN approved Holder.

3. Conservation Servitude: A copy of the executed perpetual conservation servitude with a copy of this MBI as recorded in the Mortgage and Conveyances Records Office of the parish in which the Property is located.

4. Financial Assurance: Documentation establishing the C&E financial assurances stipulated in Section IX and the Long-Term Maintenance and Protection endowment described in Section X of this MBI.

5. Property Ownership: A title search that identifies all known encumbrances including mortgages, liens, rights-of-way, servitudes, easements, etc. and documentation that the conservation servitude is not subordinate to any other easement or major lien. Sponsor shall provide a copy of the recorded document evidencing that any mortgages encumbering the property have been subordinated to the conservation servitude.

6. Execution of MBI: MBI signed by the Owner, Sponsor and CEMVN District Commander or his representative and approval by all participant IRT agencies; and

7. Work Schedule: Submission of the timetable for implementing work identified in the permit, Mitigation Work Plan or elsewhere in this MBI.

G. Subsequent Credit Releases

The Sponsor shall provide to CEMVN and the IRT a monitoring report or information necessary to document successful attainment of required milestones before each credit release. CEMVN, with assistance from the IRT, will determine whether the information provided is accurate and, in its opinion, whether those milestones were achieved. CEMVN will advise the Sponsor and the IRT in writing of its findings and the amount of credits that will be released.

XII. MODIFICATION OF THIS MBI

A. Minor Modification to MBI

1. This MBI is subject to written modification as mutually agreed to by the IRT and the Sponsor for such reasons as changes reflecting adaptive management of the Bank, credit assessment, changes in credit releases and credit release schedules. Changes to this MBI that the district engineer determines not to be significant will follow procedures in paragraph 332.8(g)(2) streamlined review process.

2. Should changes in this MBI be required by the IRT that are not acceptable to the Sponsor, the Sponsor may elect to end his participation and close the Bank. At that time, the IRT will:

- a. Revise the Bank's credit allotment based on the work completed at closure,
 - b. Review the credits sold by the Bank, and then
 - c. Determine whether the previously sold acreage is sufficient to balance mitigation needs or whether additional acreage is needed to be left in the Bank to balance the credits mitigated at the Bank.
3. The conservation servitude will remain in force on that portion of the Property remaining in the Bank and a sufficient buffer, as determined by the IRT, to protect the integrity of the Bank.

B. Addenda to Bank

1. The Sponsor may include additional acreage in the Bank as modifications to this MBI, following procedures in paragraph 332.8(g)(1) provided that (1) the additional acreage is located on the same parcel of land or on a parcel of land contiguous to the Bank and (2) the natural composition, structure, functions and processes performed by the restored/enhanced wetland community are the same as those outlined in this MBI. For the modification of this MBI, the amendment will contain the following:

- a. Detailed description of existing conditions of the Property identifying existing and prior land uses, vegetation, hydrology alterations and soils;
- b. A Mitigation Work Plan that details the proposed hydrologic and vegetative restoration/enhancement work that is necessary to produce the mitigation credits;
- c. Drawings depicting the site showing its location to other mitigation sites authorized by this MBI, different mitigation types, soils and hydrology; also drawings depicting the work required; vicinity map, a plan view depicting the proposed work and typical cross-sections of that work;
- d. A Department of the Army issued wetland determination;
- e. A title opinion and survey clearly identifying any existing encumbrances on the Property;
- f. A draft conservation servitude;
- g. A draft of the mechanism to be used to secure the necessary Construction and Establishment financial assurance; and
- h. A draft of the mechanism to be used to establish the necessary Long-Term Maintenance and Protection account.

2. CEMVN will determine if the work identified in the Mitigation Work Plan requires a DA permit. A DA permit application is not a required with the prospectus, but the Sponsor may

choose to submit an application at this time as obtaining any and all permits is a prerequisite to selling credits.

3. A public interest review will be required for each addendum. The prospectus, Mitigation Work Plan and drawings will be advertised by public notice for a minimum of thirty days to obtain public comments.

4. The IRT will evaluate each proposed property. The evaluation will typically require an inspection of the property and review of the prospectus and restoration plan. If warranted, the IRT will recommend modifications to the proposed restoration plan. By signing this MBI, the agencies are under no obligation to accept future addenda. Each addendum will be evaluated on its own merit.

5. A separate credit assessment will be conducted to determine habitat values of each addendum.

6. The mutually agreed upon Mitigation Work Plan will be signed by designated authorities for each IRT member and included as an amendment to this MBI and subject to all its requirements, conditions and terms.

C. Exclusions of Approved Mitigation Site

1. The Sponsor may elect to exclude a portion of the Property on which no credits have been sold from the Bank. However, notification and approval by the IRT must be obtained by the Sponsor prior to removal from the Bank.

2. Reduction in Bank size may adversely affect future releases of mitigation credits and financial assurances. Additionally, the IRT will re-evaluate the credit value per acre for the portion of the site remaining in the Bank. Should the re-evaluation of credits determine that debits exceed the available credits produced by the acres remaining in the Bank, the IRT may require that a portion of the area to be excluded remain in the Bank to make up the credit difference caused by the reduction in Bank size.

3. After IRT has approved the exclusion, the Owner may, with approval from the Sponsor, Holder and the IRT, modify the conservation servitude to remove the servitude from that portion of the Property excluded.

D. TERMINATION OF THIS MBI

Should the IRT determine that the Sponsor is in material default of any provision of this MBI, the IRT, acting through the CEMVN may notify the Sponsor that the sale or transfer of any Credits will be suspended until the appropriate deficiencies have been remedied. Upon notice of such suspension, the Sponsor agrees to immediately cease all sales or transfers of Mitigation Credits until the IRT informs the Sponsor that sales or transfers may be resumed. Should the Sponsor remain in default, the IRT, acting through CEMVN, may terminate the MBI and any

subsequent Bank operations. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this MBI relating to Credits that were sold or transferred prior to termination.

If circumstances warrant, such as misrepresentation, misapplication, misappropriation, improper management, non-disclosure of pertinent information or non-compliance with the terms of this MBI by the Sponsor, CEMVN and other members may void their recognition of the Bank as well as terminate their future participation in this MBI. Any executed and recorded conservation servitude pertaining to wetlands restored pursuant to mitigation contracts and this MBI will remain in full force and effect, and as waters of the United States, any subsequent discharges would require Section 404 authorization. Upon termination of this MBI, the conservation servitude shall remain on those lands for which credits were sold for the use as compensatory mitigation for adverse impacts associated with DA permits. In addition, a buffer sufficient to protect the integrity of the Bank as determined by the IRT, shall be established and protected by the conservation servitude. The revised conservation servitude shall be recorded in the Mortgage and Conveyance Office of the parish where the land is located with the holder acting as the long-term manager. All funds in the escrow account, if any, will be forfeited to the Holder or to a long-term Steward or other appropriate CEMVN designee who agrees to assume the maintenance and monitoring of the restored habitat in accordance with this MBI. Additionally, intentional misrepresentation, misappropriation, non-disclosure of pertinent information, non-compliance with the terms of this MBI, or any other intentional illegal act may be prosecuted to the fullest extent of the law.

E. Termination of Participation

Any IRT members may terminate their participation upon written notification to all signatory parties without invalidating this MBI. Participation of the IRT member seeking termination will end 30 days after written notification. Termination by one member of the IRT of its involvement in this MBI shall not terminate or affect the relationship between the remaining members of the IRT, toward each other or the Sponsor or Owner, under this MBI. Remaining Credits authorized under the authority of the withdrawing agency will no longer be available for transfer. Nothing in this Section is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the IRT members in the event of a threatened or actual breach of this MBI.

XIII. TRANSFER OF PROPERTY OR SPONSORSHIP

All transfers of any interest in the Property or sponsorship are subject to the applicable provisions of the Conservation Servitude.

A. Transfers of Bank Property

1. The Owner may sell, assign, convey or otherwise transfer its interest in the Property at any time provided that any such transfer on or after the execution date of this MBI must be made in accordance with and subject to this MBI and the Conservation Servitude and the following conditions:

a. The transferee is able to assume and agrees to assume the obligations of the Owner as set forth in this MBI; and

b. The transferee understands and agrees to the allowed/prohibited uses of the Property as set forth in the conservation servitude.

2. Notice of Property Transfer

a. The Owner must provide notice to CEMVN and to the Sponsor (if different from the Owner) that he intends to transfer the Property at least 60 days prior to the transfer. This notice must include the proposed transferee's name and the name of its authorized representative, if different, its address and phone number, the anticipated date of the transfer, and a statement signed by the proposed transferee that the Owner has:

1) Provided to it copies of this MBI and the Conservation Servitude;

2) Explained the allowed/prohibited uses of the Property; and

3) Advised that any transfer of the Property is subject to the terms and conditions contained in the MBI.

b. The Sponsor also must provide notice to CEMVN of any transfer of the bank Property by the Owner at least 60 days prior to the transfer or within 5 business days of learning of such transfer, whichever is later. This obligation continues until the Sponsor has provided the required notice to CEMVN even after the Property has been transferred. The Owner and the Sponsor may submit a joint notice, in which case the notice shall be clearly identified as such. The Sponsor's notice must include the proposed transferee's name and the name of its authorized representative, if different, its address and phone number, the anticipated date of the transfer, and a statement signed by the proposed transferee that the Sponsor has:

1) provided to it copies of this MBI and the Conservation Servitude;

2) explained the allowed/prohibited uses of the Property; and

3) advised that any transfer of the Property is subject to the terms and conditions contained in the MBI.

c. After receipt of the notice of transfer, the IRT may seek additional information about the proposed transferee and its fitness to assume the obligations of Owner from the current Owner, the proposed transferee, or from the Sponsor. Additionally, the Sponsor may submit any information it deems relevant to the transfer to the IRT.

d. Any transfer of the ownership made without the required notice by Sponsor may, at the discretion of the IRT, result in a suspension of credit sales until the Sponsor provides the information required in the notice.

3. At the time of the transfer of the Property, the transferee must sign this MBI as Owner and attest as follows, which statements shall be typed above the transferee's signature on the MBI:

a. That it has read and understands and agrees to the terms and conditions of the MBI and the conservation servitude; and

b. That it agrees to assume all obligations and responsibilities of the Owner contained in this MBI.

4. Upon execution of the MBI by the transferee/new owner, all obligations of the Owner pursuant to this MBI become those of the transferee/new owner.

5. From and after the date of any transfer by the Owner of its interest in the Property, the transferor shall have no further obligations hereunder and all references to the Owner in this MBI shall thereafter refer to the transferee, except that the transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

B. Transfer of Sponsorship

1. The Sponsor may sell, assign, convey or otherwise transfer its interest in the Bank at any time provided that the Sponsor is in full compliance with all requirements of this MBI (including all financial assurance requirements) and the transferee provides a written statement agreeing to assume the obligations of the Sponsor as set forth in this MBI.

2. Notice of Change of Sponsor

a. The Sponsor must provide notice of its intent to transfer the sponsorship to the IRT, through CEMVN, and to the Owner at least 60 days prior to the transfer. This notice must include:

1) The proposed transferee's name and the name of its authorized representative, if different, its address and phone number, and the anticipated date of the transfer;

2) A statement signed by the proposed transferee that: (a) the Sponsor has provided to it copies of this MBI, the conservation servitude, ledgers and financial statements; and (b) it will assume all of the obligations and responsibilities of the Sponsor as set forth in the MBI upon transfer of the bank;

3) The proposed transferee's qualifications (background, resources and experience) to perform the Sponsor's responsibilities;

b. The Sponsor must also provide in the notice information relative to the current condition of the Bank, which information must also be provided to the proposed transferee. This information must include:

1) Current (*i.e.*, within 30 days) financial statements for all financial assurances issued by the providers of those assurances;

2) A current ledger listing all credit transactions for the Bank and the required information for each transaction; and

3) A monitoring report providing a description of current conditions including: (a) a discussion of the status of the restoration of wetland hydrology and remaining work (if any) necessary to fully establish hydrology; (b) the general condition of seedlings (survivorship by species) and a statement as to whether the survivability milestone will be met at the next monitoring report; and (c) an indication of the degree of exotic/invasive species density (average stems per acre) and measures required to control them.

3. At the time of the transfer of the sponsorship, the transferee must sign this MBI as the Sponsor and attest as follows, which statements shall be typed above the transferee's signature on the MBI:

a. That it has read and understands and agrees to the terms and conditions of the MBI and the Conservation Servitude; and

b. That it agrees to assume all of the obligations and responsibilities of the Sponsor contained in this MBI.

4. The new Sponsor must provide to CEMVN a copy of the executed MBI and a copy of the executed Mitigation Bank Transfer Form.

5. Any transfer of the sponsorship made without the written 60-day notification to the IRT may, at the discretion of the IRT, result in suspension of credit sales until the transferee/new Sponsor provides the information required in the notice, signs the MBI as Sponsor, and provides a copy of the executed MBI to the IRT.

6. From and after the date of any transfer by Sponsor of its interest in the sponsorship, the transferor shall have no further obligations hereunder and all references to Sponsor in this MBI shall thereafter refer to the transferee, except that the transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

XIV. ESTABLISHMENT OF STEWARD

Should the Sponsor choose to designate a Long-term Steward, the Sponsor will provide CEMVN with written notice of his intent to designate one at least 60 days prior to the effective date of the Steward's assumption of the responsibilities. This notice must include the proposed Steward's name and the name of its authorized representative, if different, its address and phone number, and the anticipated date of the transfer. Once the IRT has determined the qualifications of and accepted the Long Term Steward chosen by the Sponsor, to assume the responsibilities for

the stewardship over the Property, CEMVN must be provided with a statement signed by the proposed Steward that the Sponsor has:

- A. Provided to it copies of this MBI and the Conservation Servitude;
- B. Explained the allowed/prohibited uses of the Property; and
- C. Transferred any remaining C&E financial assurance and Long-term Maintenance and Protection endowment funds to accounts established by the Long-term Steward and approved by CEMVN.

All funds in the Long-term Management and Protection Fund will be transferred to the designated Long-term Steward.

XV. BANK LIFE

Bank life ends when all success criteria have been attained and all credits have been sold. At this point all construction and establishment financial assurance have been returned to the Sponsor and long-term management is initiated. Unless such responsibility is transferred, with prior approval of CEMVN, to a Long-term Steward, the Sponsor will remain responsible for: 1) the compensatory mitigation requirements for any DA permit for which it sold Bank credits; and 2) the long-term management, maintenance, monitoring and protection of the mitigation represented by those credits.

XVI. OTHER PROVISIONS

A. Disclaimer

Whereas, this MBI does not in any manner affect statutory authorities and responsibilities of the signatory parties.

B. Non-reporting Nationwide Permit

The Sponsor agrees not to utilize a non-reporting Nationwide Permit or Regional Permit under Section 404 of the Clean Water Act to impact any Waters of the United States on the Property. Notification shall be required for the use of any Nationwide Permit and/or Regional Permit in connection with this Bank.

C. Dispute Resolution

Resolution of disputes about amendments to this MBI shall be in accordance with 33 CFR § 332.8(e). If a dispute arises about the application of this MBI any party may raise the issue to CEMVN. CEMVN will convene a meeting of the IRT, or initiate another appropriate forum for communication, typically within twenty days of receipt of notice of the dispute. CEMVN will fully consider comments provided by the IRT and the Sponsor, if provided, in reaching its decision. Ultimately CEMVN is responsible for making final decisions regarding the use of the

Bank. Disputes related to satisfaction of success criteria may be subject to independent review from government agencies or academia that is not part of the IRT. The IRT will evaluate this input and determine whether the success criteria are met.

D. Overall Performance

If the IRT determines that the Bank is not performing according to the standards and criteria set forth in this MBI, credit sales will be suspended until the Sponsor has developed a remedial action plan and performed the work defined in the remedial action plan necessary to produce additional credits. The Sponsor will provide to the IRT the remedial action plan within 60 days of notification of any deficiency. Following IRT approval of the remedial action plan, the Sponsor will conduct the remedial action measures prior to the end of the nearest growing season. Subsequent adaptive management measures may be required by the IRT. Sale of credits will not resume until remedial actions have been taken. The Sponsor will continue to provide monitoring reports as specified in this document unless determined to be unnecessary by the IRT.

E. Specific Language of MBI Shall Be Controlling

The Parties intend the provisions of this MBI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this MBI conflicts with specific language in any document that is incorporated into this MBI by reference, the specific language within the MBI shall be controlling.

F. Notice

Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

Owner, Succession of John E. Jumonville, Sr. and Claude Coulon Jumonville
7514 Ponderosa Lane
Ventress, LA 70783
Attn: Claude Coulon Jumonville, Independent Administrator
Phone: (225) 638-8615
Email: ponderosaranch@bellsouth.net

Sponsor, Delta Land Services, LLC
1090 Cinclare Drive
Port Allen, LA 70767

Ponderosa Ranch of Pointe Coupee Mitigation Bank
Mitigation Banking Instrument

Attn: George Guerin, Chief Operating Officer
Phone: (225) 343-3900
Email: george@deltaland-services.com

U.S. Army Corps of Engineers New Orleans District (CEMVN)
7400 Leake Ave.
New Orleans, Louisiana 70118
Attn: Brian Breaux
Phone: (504) 862-1938
Email: brian.w.breaux@mvn02.usace.army.mil

Region VI of the U.S. Environmental Protection Agency (EPA)
1445 Ross Avenue
Dallas, Texas 75202
Attn: Raul Gutierrez
Phone: 214-665-7134
Email: gutierrez.raul@epamail.epa.gov

U.S. Fish and Wildlife Service (FWS)
646 Cajundome Blvd., Ste. 400
Lafayette, La 70506
Attn: Patti Holland
Phone: 337-291-3121
Email: Patti_Holland@fws.gov

Louisiana Department of Wildlife and Fisheries (LDWF)
2000 Quail Dr., Room 433
Baton Rouge, Louisiana 70898-9000
Attn: Kyle Balkum
Phone: 225-765-2819
Email: kbalkum@wlf.louisiana.gov

G. Entire Agreement:

This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

H. Invalid Provisions

In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

I. Headings and Captions

Any paragraph heading or captions contained in this MBI shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this MBI.

J. Counterparts

This MBI may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

K. Binding

This MBI shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor and the CEMVN, even though it may not, at that time or in the future, be executed by the other potential parties to this MBI. The execution of this MBI by EPA, LDWF, or the U.S. Fish and Wildlife Service, or other agency, city or county shall cause the executing agency to become a party to this MBI upon execution, even though all or any of the other potential parties have not signed the MBI. Execution does not signify the agencies' agreement with the use of credits in the Bank in connection with any specific permit or project.

L. Liability of Regulatory Agencies

The responsibility for financial success and risk to the investment initiated by the Sponsor rests solely with the Sponsor. The regulatory agencies that are parties to this MBI administer their regulatory programs to best protect and serve the public's interest in its waterways, and not to guarantee the financial success of Banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual Bank. Sponsors should not construe this MBI as a guarantee in any way that the agencies will ensure sale of credits from this Bank or that the agencies will forgo other mitigation options that may also serve the public interest. Since the agencies do not control the number of mitigation banks proposed or the resulting market impacts upon success or failure of individual banks, in depth market studies of the potential and future demand for credits are the sole responsibility of the bank proponent.

Ponderosa Ranch of Pointe Coupee Mitigation Bank
Mitigation Banking Instrument

CLAUDE COULON JUMONVILLE

DATE

PONDEROSA RANCH OF POINTE COUPEE MITIGATION BANK

**Ponderosa Ranch of Pointe Coupee Mitigation Bank
Mitigation Banking Instrument**

GEORGE GUERIN

DATE

PONDEROSA RANCH OF POINTE COUPEE MITIGATION BANK

Ponderosa Ranch of Pointe Coupee Mitigation Bank
Mitigation Banking Instrument

MARTIN S. MAYER
CHIEF, REGULATORY BRANCH

DATE